In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-136

RAPHAEL SANTANA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

The question is whether the decision in *Turner* v. *United States*, 396 U.S. 398, is to be applied retroactively to overturn a voluntary plea of guilty.

On July 1, 1957, in the United States District Court for the Southern District of New York, petitioner pleaded guilty to one count of unlawful possession of one-half ounce of cocaine, knowing the drug was illegally imported into the United States, in violation of 21 U.S.C. (1964 ed.) 173 and 174. He was sentenced to a term of imprisonment for five years.

Petitioner is presently incarcerated in the United States Penitentiary, Atlanta, Georgia, pursuant to a judgment of conviction entered in the United States District Court for the Eastern District of New York, sentencing him to fifteen years in jail as a second federal narcotics law offender, the first conviction being the one in 1957.

Petitioner subsequently filed a motion pursuant to 28 U.S.C. 2255, seeking to set aside his 1957 conviction on the ground that the evidentiary presumption of knowledge of importation was declared unconstitutional with respect to small amounts of cocaine by *Turner* v. *United States*, 396 U.S. 398 (1970), and that *Turner* should be applied retroactively to guilty pleas. Petitioner's motion was denied (Pet. App. B). The court of appeals affirmed (Pet. App. A).

Petitioner's contention was thoroughly analyzed below and properly rejected by the court of appeals, relying essentially on this Court's decisions in *McMann* v. *Richardson*, 397 U.S. 759, and *Brady* v. *United States*, 397 U.S. 742.[1] We rely on that opinion in urging that the petition for a writ of certiorari be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

AUGUST 1973.

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[1] See also *Tollett* v. *Henderson*, No. 72-95, decided April 17, 1973.